

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

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date: July 7, 2000

to: Office of the Taxpayer Advocate, Northern CA District (Oakland)  
Attn: Laura Lee, Collection Technical Advisor

from: District Counsel, Northern California District, San Francisco

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subject: Application for Extension of Time in which to  
File Individual Income Tax Return

This responds to your request for a legal opinion on a recurring situation facing the Special Procedures function office in Oakland. The Special Procedures function office (SPf) has received numerous Applications For Extension Of Time For Payment Of Tax (Forms 1127) from taxpayers who SPf is certain intended to request an extension of time to file their respective individual income tax returns. You have asked whether SPf can accept the erroneously filed Forms 1127 as applications to extend time in which to file a tax return pursuant to I.R.C. § 6081.

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Taxpayer Advocate, Examination, Collection, or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Taxpayer Advocate, Examination, Collection, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Taxpayer Advocate, Examination, Collection, or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

## FACTS

Your request for a legal opinion does not relate to a specific taxpayer, but rather arises from what appears to be a not uncommon misunderstanding among some taxpayers. Numerous taxpayers have mailed to SPf in Oakland Forms 1127, Application for Extension of Time For Payment of Tax, in accordance with the instructions on the Form 1127. After reviewing the Forms 1127 at issue here, SPf believes that certain taxpayers in fact intended to request an extension of time to file their individual income tax returns. On the completed Form 1127 you provided to us by way of example, the taxpayer states that the "extension is necessary because...Waiting for home improvement receipts. I still have not received from various workers...I will be receiving a refund from the gov't [sic]. I do not owe money." Emph. in the orig. This taxpayer clearly wants more time to file a Form 1040, does not believe any additional payment is necessary, and hence is not using the Form 1127 to request additional time in which to pay the income tax.

The Internal Revenue Service has published several forms which taxpayers may use to apply for an extension of time in which to file a tax return, including two for individual income taxpayers. The taxpayers involved in the present inquiry are individuals who apparently sought additional time to file a Form 1040 for taxable year 1999 because, like the taxpayer in the example cited above, they lacked sufficient information to file an accurate Form 1040.<sup>1</sup> A taxpayer generally applies for extension of time in which to file a tax return by submitting to the Internal Revenue Service a Form 4868 (automatic 4-month extension), or a Form 2688 or letter (discretionary 6-month).

Your office asks whether SPf has the authority to grant an extension of time in which to file a Form 1040 when the taxpayer has timely requested such an extension but has not used an approved method to request it.

## Conclusion

Based on the foregoing, we conclude that the received Forms 1127 do not meet the criteria for an application for an automatic extension of time to file under Treas. Reg. § 1.6081-4. Treasury Regulation § 1.6081-1(b) provides certain attenuated authority for the district director to entertain some of the Forms 1127

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<sup>1</sup> The rules for extensions of time governed by Treas. Reg. §§ 1.6081-1T, 1.6081-2, 1.6081-3, 1.6081-5, 1.6081-6, or 1.6081-7 (i.e. partnerships, corporations, trusts, Real Estate Mortgage Investment Conduit (REMIC)) are not discussed herein.

under the "undue hardship" provisions of Treasury Regulation § 1.6081-1, but the National Office may not agree with this position. Alternatively, the Internal Revenue Service may provide relief from the delinquent filing penalties if it determines that the taxpayers had reasonable cause for not filing their Forms 1040 by April 17.

#### DISCUSSION

As a rule, taxpayers who are required to file income tax returns for a given year must file them no later than the 15th day of the fourth month of the subsequent year, or April 15 in the case of taxpayers using the calendar year. I.R.C. § 6072(a). Where April 15 falls on a Saturday, Sunday, or a day observed as a holiday in Washington D.C., the return is due on the next day which is not a Saturday, Sunday or holiday. I.R.C. §§ 6072(a) and 7503; Treas. Reg. § 1.6072-1(a), (d). Because April 15, 2000, fell on a Saturday, the income tax returns for tax year 1999 calendar year were due on April 17, 2000. Any return filed after April 17, 2000, would be subject to late filing penalties unless the Internal Revenue Service granted an extension of time in which to file on or before that date.

The Internal Revenue Service may grant an extension of time for filing an individual income tax return required by the Internal Revenue Code, and the regulations promulgated thereunder, of no more than 6 months, unless the taxpayers are abroad. I.R.C. § 6081(a).<sup>2</sup> Treasury Regulation section 1.6081-1 provides in general that the district directors and directors of service centers are authorized to grant a reasonable extension of time, of up to 6 months, to file a return, unless the taxpayer is abroad.

#### The Automatic 4-Month Extension To File A Tax Return

An individual who is required to file an individual income tax return will be allowed an automatic 4-month extension of time to file the return after the date prescribed for filing the return provided the requirements of Treas. Reg. § 1.6081-4(a)(2), (3) and (4) are met. Treas. Reg. § 1.6081-4(a). The application for an automatic extension of time to file must meet all of the following requirements:

1. Be submitted on Form 4868, Application for Automatic

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<sup>2</sup> An extension of time to file is not an extension of time to pay. Treas. Reg. §§ 1.6081-1(a), 1.6081-4(b). Payment of the tax is generally due on the original due date of the return. Id.

Extension of Time to File U.S. Individual Income Tax Return, or in any other manner as may be prescribed by the Commissioner. Treas. Reg. § 1.6081-4(a)(2).

2. Be filed on or before the date prescribed for filing the individual income tax return with the Internal Revenue Service office designated in the application's instructions. Treas. Reg. § 1.6081-4(a)(3).

3. Show the full amount properly estimated as tax for the taxable year. Treas. Reg. § 1.6081-4(a)(4).

Although the taxpayers failed to file a Form 4868 to request an extension of time to file, such failure is not fatal per se if the taxpayer submits a request in another manner as may be prescribed by the Commissioner. Treas. Reg. § 1.6081-4(a)(2)(ii). Treasury Regulation § 1.6081-4 fails to specify any other method by which a taxpayer may file an application for an automatic 4 month extension to file, and we are unable to find any other method approved by the Commissioner for obtaining a 4-month extension without payment; the instructions for Form 4868 do provide that a taxpayer may request an extension of time to file by telephone when timely paying the tax by credit card. While the instructions for Form 4868 refer to Form 2688 or a letter, these methods are reserved for application for extension of time made when the taxpayer believes the automatic 4 month extension will be insufficient.

Further, our exhaustive research through the Internal Revenue Code, regulations promulgated thereunder, or case law failed to unearth any instance in which the Internal Revenue Service has permitted a taxpayer to apply for extension of time in which to file by using a Form 1127. We conclude that Form 1127 does not meet the first requirement for an application for an automatic 4 month extension of time to file. Treas. Reg. § 1.6081-4(a).

Even if the Form 1127 met the first requirement of Treasury Regulation § 1.6081-4(a), it would also need to be filed on or before the date prescribed for filing the individual income tax return with the Internal Revenue Service office designated in the application's instructions. Treas. Reg. § 1.6081-4(a)(3). While this requirement, to file the application with the office "designated in the application's instructions...." is not without ambiguity in situations like the present, where the taxpayer has used a different application, it is reasonable to infer from the context, that the application the regulation refers to is Form 4868. The instructions for Form 4868 state that a taxpayer not making a payment must file the form with the Service Center in either Fresno, California or Ogden, Utah, depending on which

California county he resides in. California residents making a payment with the application must send the Form 4868 to either Los Angeles, California, or San Francisco, California, again depending on which county he resides in. These counties, not listed here, are listed on the second page of Form 4868 a copy of which is attached for your convenience. We note that the Chief, Special Procedures function for the Northern California District does not maintain an office in any of these counties.

The application would also have to show the full amount properly estimated as tax for the taxable year. Treas. Reg. § 1.6081-4(a)(4). Form 1127 does not solicit this information.

#### The Discretionary 6-Month Extension of Time to File

In very limited instances, a taxpayer may file for a discretionary 6-month extension without applying for the automatic 4-month extension. That is, in the case of "undue hardship," an extension of time for filing an individual income tax return may be granted under Treasury Regulation § 1.6081-1(a) when an automatic extension has not been allowed pursuant to the provisions of Treas. Reg. § 1.6081-4(a). Treas. Reg. § 1.6081-4(a)(5). Neither section 6081 nor the regulations promulgated thereunder define "undue hardship." We look to I.R.C. § 6161 for guidance. Section 6161 provides that an undue hardship may support the granting of an extension of time for paying a tax or deficiency. A undue hardship must be more than an inconvenience to the taxpayer. Treas. Reg. § 1.6161-1(b). The term "undue hardship" means more than an inconvenience to the taxpayer. Treas. Reg. § 1.6161-1(b). It must appear that a substantial hardship will be visited upon the taxpayer. See Treas. Reg. § 1.6161-1(b).

Such application shall be in writing, properly signed by the taxpayer or his duly authorized agent, and shall clearly set forth the particular tax return, including the taxable year with respect to which the extension of the time of filing is desired, and a full recital of the reasons for requesting the extension to aid the internal revenue officer in determining the period of extension, if any, which shall be granted. Treas. Reg. § 1.6081-1(b). Further, the application of a taxpayer wanting to extend the time for filing an individual income tax return, Form 1040, shall also set forth (i) whether an income tax return has been filed on or before its due date for each of the three taxable years immediately preceding tax year of such return, and if not, the reasons or each failure, and (ii) whether the taxpayer was required to file a declaration of estimated tax of the taxable year of such return, and if so, whether each required estimated tax payment was made on or before its due date. Id.

Pursuant to Treasury Regulation section 1.6081-1, an application for an extension of time in which to file an individual income tax return may be on Form 2688 or in the form of a letter. Treas. Reg. § 1.6081-1(b)(5). Ostensibly, the district director would have the discretion to construe certain of the Forms 1127 received as "letters" applying for an extension to file under Treasury Regulation 1.6081-1. The discretion would extend only to those taxpayers who were required to submit an application for extension to file under Form 4868 to San Francisco: those who resided in the listed California counties and who submitted payment with the Form 1127. Additionally, under this theory, the district director would evaluate each application to ensure each met the criteria of Treasury Regulation § 1.6081-1.

A Taxpayer May Establish "reasonable cause" For Failing To Timely File An Income Tax Return

Additionally, the Internal Revenue Service has the discretion to grant relief from the late filing penalties. Absent an extension to file, a return filed after April 17, 2000, would be subject to a penalty under I.R.C. § 6651(a) unless the taxpayer could show that such failure is due to reasonable cause. I.R.C. § 6651(a)(1).

The Internal Revenue Manual (IRM) provides that a cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates no willful intent to disobey the taxing statutes, will be accepted as reasonable. IRM 7(10)91.3. In cases where ignorance of the law is claimed, reasonable cause should not be presumed. *Id.* Determination of reasonable cause is factual: Each case must be determined on its own merit. Ignorance of the law can be considered for reasonable cause only if other facts support this contention, such as first-time filers, sudden first-time FTD depository requirements, etc. The taxpayer should evidence ordinary business care and prudence and the case should be judged on its own merits. *Id.* Given the complexity of the tax laws and the multitudinous forms engendered, a reasonable person could conclude that an unsophisticated taxpayer who equates paying his taxes with filing his income tax return would believe he had legitimately applied for an extension to file his income tax return when he submitted the Form 1127 to the district.

This issue is one of first impression. We are asking the National Office to conduct a post review of our advice and will inform you of any subsequent changes in our position. If you have any questions in the meantime, please call the undersigned at (415) 744-9217.

Patricia A. Donahue  
Acting District Counsel

By: ~~PATRICIA MONTERO~~  
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Attachment: Form 4868

cc: Western Regional Counsel  
Attn: ARC (GL)